

REPORT - PLANNING COMMISSION MEETING
October 24, 2002

Project Name and Number: Inclusionary Housing Ordinance Zoning Text Amendment (PLN2003-00088)

Applicant: City of Fremont

Proposal: To consider a Zoning Text Amendment (ZTA) to provide an Inclusionary Housing Ordinance for the City of Fremont

Recommended Action: Recommend approval to the City Council, based on findings.

Location: Citywide

Assessor Parcel Number(s): Citywide

Area: Citywide

Owner: N/A

Agent of Applicant: N/A

Consultant(s): N/A

Environmental Review: An Initial Study and Negative Declaration were prepared for this project. The Initial Study concluded that there would be no significant effects on the environment and no mitigation measures were proposed. The comment period for the Initial Study and Negative Declaration began on September 27, and will conclude on October 28, 2002.

Public Hearing Notice: Public hearing notification is applicable. Because the Zoning Text Amendment is Citywide, a notice of public hearing display advertisement was delivered to *The Argus* on October 9, 2002, to be published October 14, 2002.

In addition 367 public hearing notices were mailed as a courtesy to interested parties.

Executive Summary: Policy 3C of the City's recently (February, 2002) updated Housing Element calls for the City to develop an Inclusionary Housing Ordinance to help meet the community's affordable housing needs. A consultant assisted the City in preparing background information and draft ordinances. Staff met with community and developer stakeholders on several occasions to review possible components and parameters for an inclusionary ordinance. The enclosed proposed ordinance seeks to balance the sometimes conflicting goals of stakeholders. Following Planning Commission action, Staff intends to present the Inclusionary Housing Ordinance to the City Council for adoption on November 12, 2002.

Background and Previous Actions: In January 2001 a Council Study Session was conducted to launch the City's Housing Element update process. At that meeting, the Council expressed interest in the development of an Inclusionary Housing Program for Fremont. In June 2001, staff presented a mid-year status report on the Housing Element's progress to the Council and the Council continued to express support for the development of such a program. In February, 2002, the City Council adopted the Housing Element with Policy 3C that calls for the City to "*maintain and/or adopt appropriate land use regulations and other development tools to encourage the development of affordable housing*". The following implementation measure is included:

Implementation Program 20

Develop an Inclusionary Housing Program that requires a minimum amount of affordable housing to be created in conjunction with market rate residential development. Ensure that the program will include policies that require

units affordable to very low, low and moderate-income households and provides a variety of methods to achieve those goals, such as on-site units, in-lieu fees and/or land donation.

*Time Frame: 2001-02 Develop Program
2002-2006 Implement Program*

Objectives: 350-400 total units affordable to very low, low, and moderate income Households

In February 2002, the City of Fremont submitted its updated Housing Element for 2001-2006 to the State of California Office of Housing and Community Development (HCD) for review and approval. Although the State has called for modifications in the Housing Element in order for it to be certified, none of the requested changes pertain to the Inclusionary Housing Program. For more details on the status of the Housing Element, please refer to the report on the Housing Element in the Planning Commission packet for October 24, 2002.

The State established a set of housing production targets that must be met if Fremont is to provide for its share of the region's population and job growth over the next five (5) years. Meeting these goals forms the basis for the development of the City's Housing Element, a required element of the City's General Plan. The housing production goals for Fremont are listed below:

Household Income Level	Estimated New Unit Need (1999-2006)	Total Constructed or Approved/Under Construction 1999-2001	Revised New Unit Need (2001-2006)
Very Low	1,079 units	206 units	873 units
Low	636 units	34 units	602 units
Moderate	1,814 units	23 units	1,791 units
Above Moderate	3,179 units	1,532 units	1,647 units
TOTAL	6,708 units	1,795 units	4,913 units

In order to ensure the development of a diversity of housing types and prices to meet regional housing needs, many communities have adopted inclusionary housing programs. Such programs typically require that a minimum percentage of the units in new housing developments are made affordable to targeted income groups. For example, in Mountain View, a development consisting of three (3) or more ownership units is required to reserve up to 10% of every project at a price affordable to low or moderate income households; a development of five (5) or more rental units is required reserve 10% of the units for very low to lower income households. This program also allows developers to pay an equivalent in-lieu fee under certain conditions: (1) when the below market rate (BMR) obligation results in a fraction of a unit and (2) when the price of the homes in the development are too expensive to be practical for a BMR unit. Petaluma and Livermore programs allow developers to satisfy their BMR requirement on-site or off-site. Some developers have teamed with non-profits who develop the affordable units for the developer on sites adjacent to or elsewhere than the proposed development.

NPH, the non-profit housing group, reports that over 80 California cities and counties have adopted Inclusionary Housing Programs since the mid '70s, resulting in the production of 25,000 affordable housing units and the collection of that over \$23 million in in-lieu fees to support the development of affordable housing. In the Bay

Area, such diverse jurisdictions as East Palo Alto, Livermore, Pleasanton, Mountain View, Napa, Sunnyvale, Benicia and Emeryville have adopted inclusionary housing programs.

Background Studies: On April 23, 2002 at a regularly scheduled City Council meeting, the City Council directed staff to proceed with the development of the Inclusionary Housing Ordinance. Staff hired David Paul Rosen & Associates, a Bay Area firm with extensive background in analysis of housing policy alternative and the development of effective inclusionary housing ordinances. Survey and background reports were prepared to identify and support the characteristics of the key components in the Inclusionary Ordinance. Staff received input from various community stakeholders, including the building and residential developers and community representatives and advocates, on the various components of an Inclusionary Ordinance. The City Council provided further direction and opportunity for public input at a City Council Study Session on September 17, 2002. The Planning Commission held a Study Session on October 10, 2002 to provide further input to staff.

The City of Fremont Inclusionary Housing Study also provided information about the affordable housing need in Fremont, affordable housing production in Fremont, barriers to production of affordable housing, and additional options to meet the affordable housing need. The study also included a survey of "Local Inclusionary Housing Programs Among the Selected Bay Area Cities". These cities included Dublin, Pleasanton, Union City, Mountain View, Sunnyvale, Livermore, San Mateo, Palo Alto, Napa, and Novato. These studies and surveys assisted staff in the presentation of materials to stakeholders, the Planning Commission and the City Council and helped form the basic provisions of the proposed Inclusionary Housing Ordinance.

David Paul Rosen & Associates (DPR&A) performed an Affordability Gap Analysis to support the proposed development of the Inclusionary Housing Ordinance. The Affordability Gap Analysis identifies the revenue lost by making housing affordable to families at a range of income levels. The study analyzes the affordability "gap" for very low, low, and moderate income households in Fremont. The gap analysis approach is used to measure the difference between what households of different income levels can afford to pay for renter and ownership housing and what it costs to produce such housing in Fremont. DPR&A gathered Fremont-specific information on the actual costs of producing four different housing prototypes. The attached report provides the methodology for determining these numbers. The gap analysis provides a point of reference for setting an in-lieu fee. The gap amount can be used to calculate a fee that will supply enough funds to build required units. For a 15% inclusionary requirement in Fremont and to supply units at a mix of very low, low and moderate income levels per unit, the in-lieu fees necessary to meet the gap can be found in the Affordability Gap Analysis Summary of Results enclosed.

Meetings with Stakeholders and Study Sessions: Staff conducted meetings with various stakeholders over a period of months to get their ideas and input on key components of an Inclusionary Housing Program. Separate meetings were held with the builders and residential developers and community representatives and affordable housing advocates to allow for maximum brainstorming opportunities within the two groups. These meetings were held on June 27 2002, August 21 2002, and September 30, 2002 in the afternoon for the development community and in the evenings for community representatives and advocates. These meetings provided a framework for sharing information with the public about the Housing Element implementation program, including the basis for an Inclusionary Housing Program. The meetings also provided an effective means of gathering input on key components of the proposed Inclusionary Housing Ordinance. On September 17, 2002 a City Council Study Session was conducted, and one for the Planning Commission was held on October 10, 2002. Copies of agendas, attachments and minutes, if any, are enclosed.

Project Description: Staff is proposing to modify the Fremont Municipal Code to add the Inclusionary Housing Ordinance. This would include an Amendment to Title VIII, Chapter 2, Zoning, to add a new Article 21.5. The majority of the text of the attached ordinance would be codified in this section of the Municipal Code, between Article 21.3, Special Provisions Applying to Miscellaneous Uses and Article 22, Exceptions and Modifications. Key components of the Inclusionary Housing Ordinance follow:

(1) Applicability:

The draft Inclusionary Housing Ordinance proposes that all new residential developments consisting of seven (7) or more units be required to assist in the development of quality affordable housing within market rate developments to help meet the housing needs of very low, low and moderate income households in Fremont. Language is included in the proposed Ordinance to prevent evasion of the provisions of the Ordinance should a developer attempt to develop less than seven (7) units on contiguous lots. For residential developments consisting of twenty (20) units or less, when calculating the 15% requirement, fractions of units will be disregarded. When calculating the 15% requirement in developments of more than twenty (20) units, where the fraction is .6 or greater, the owner must construct the next higher whole number of units.

Discussion: At the City Council Study Session on the Inclusionary Housing Ordinance conducted on September 17, 2002, staff's original proposal was to apply the ordinance to projects consisting of five (5) units or more as this size development would require the filing of a tentative and final map. Staff is now recommending this be changed to seven (7), when a 15% requirement results in one unit, not a fraction of a unit. In a meeting with the residential development community (including a non-profit builder specializing in affordable housing) following the City Council Study Session, those present strongly urged staff to reconsider the original recommendation and exempt small projects of ten (10) units or less since a 15% requirement would be especially difficult for these projects. The developer community proposed that projects between ten (10) and twenty units (20) would pay a fee and the full requirements of the proposed ordinance only be applied to projects of twenty (20) or more units. On the other hand, community stakeholders and affordable housing supporters pointed out that most future development will be smaller projects since the City has very little vacant land left and most sites are smaller infill sites. The affordable housing advocates continued to strongly support a 20% inclusionary housing requirement. Staff proposes a 15% requirement on developments greater than seven (7) units.

(2) Affordability:

For rental projects, the 15% requirement would be satisfied by reserving 9% of the development as affordable to very low income and 6% for low income. This percentage mix helps to meet the City of Fremont's Redevelopment Agency housing production requirement and meets the proportional affordable housing need for these income groups identified in the Housing Element. For ownership developments, the 15% requirement would be satisfied by reserving 15% of new units as affordable to moderate income levels (up to 120% of area median income computed by family size with a sales price set at 110% of area median income).

Discussion: The affordable housing community recommends elimination of the 2-tiered requirement and recommends targeting a 20% set-aside requirement for very low (10%) and low income (10%) for both owner and rental developments. These advocates note that during the Housing Element Update, the needs of moderate income were exceeded over the past few years, while the housing goals for very low and low income households were not met. In response, Staff believes that moderate-income needs were primarily met through rental housing production, but home ownership is still out of reach for these households. Some low income families may be able to purchase the proposed moderate income inclusionary for-sale units when calculating affordability at 110% of median income, combined with the City's existing Affordable Housing Fund's down payment assistance program.

(3) Alternatives to On-Site Construction

The proposed Ordinance includes some flexibility in implementation by allowing for the consideration of alternatives to the construction of units within the project, including but not limited to:

- (a) Substitution of ownership units with rental units if the rental units are at least proportionally equal in the number of bedrooms to the owner-occupied units;
- (b) Off-site construction completed by the developer/applicant or in partnership with another developer so long as the off-site affordable units are equal or greater in number, larger or affordable to households with lower incomes, a financing plan is in place and approved, and completion of the off-site units is secured by a requirement that certificates of occupancy for the market rate units be issued after those for the affordable units. The City may require that completion of off-site units be further secured by the developer's agreement to pay an in-lieu fee in the event the off-site units are not timely completed.

Finally, if the off-site units receive any public assistance, the developer will contribute to the off-site units' economic value equal to the value of making on-site units affordable.

- (c) Land dedication: Developers may dedicate, without cost, land to the City if the value of the lot/s is sufficient to make the required affordable units economically feasible, a financing plan is in place and the lot/s are suitable for construction at a feasible cost, served by utilities and other infrastructure, and have no hazardous material or constraints on development of affordable housing.

(4) In Lieu Fee

The emphasis of the Inclusionary Housing Ordinance is on the construction of new affordable housing units. However, there may be some cases in which on-site construction of affordable housing units would not be compatible with the over-all development. The Ordinance allows the payment of an in-lieu fee only for projects in the "residential very low density" zoning or in "open space" designations in the City's General Plan. The fee is recommended to be the rate of the actual affordability gap, currently calculated as \$30,882.00 per unit (see Affordability Gap Analysis Summary of Results enclosed). Therefore, each single-family unit in such developments will pay the required fee. This will allow the City to collect sufficient funds to build the required number of units to meet the 15% affordability requirement elsewhere.

Discussion: The residential development community recommended a fee in the range of \$10,000 - \$15,000 per unit. In light of the fact that all other residential developments (greater than seven (7) units at full build-out) would be required to build affordable units, staff continues to recommend that each unit within a low-density development pay the full fee resulting from the affordability gap to enable the required affordable units to be built elsewhere. At the Planning Commission Study Session conducted on October 10, 2002, a commissioner requested a comparison of all Fremont fees with other (surrounding) jurisdictions. The most recent study, prepared to compare Impact Fees, was conducted in 2001 and is enclosed for informational purposes. A comparison of Inclusionary Housing Fees is provided within the enclosed Inclusionary Housing Survey, also attached.

In attempting to craft an In-Lieu fee, a number of ideas surfaced at the community meetings as well as at the Planning Commission, including: (1) a suggestion to establish a graduated fee based on the cost of the development of the home/s; payment of such a fee would only be an option if on-site and off-site compliance options could not be met by the developer; (2) a suggestion by developers to institute a lower fee (in the range of \$10,000-\$15,000 or \$15,000 - \$20,000 \$10,000 to \$15,000 per unit) and to look for additional sources of financial support, such as the development of a commercial linkage fee; (3) a suggestion to impose in-lieu fees when the inclusionary requirement results in a fraction of a unit; (4) a suggestion to impose a fee on smaller developments which should not be required to build units but should be given the option to pay a "reasonable" fee. Staff believes the recommended program strikes a reasonable balance between the various objectives and interests.

(5) "Grandfather" Provision

The proposed Inclusionary Housing Ordinance includes a "grandfather" provision that allows developments with pending development applications (excluding Preliminary Review (PRP)) to be exempt from the requirements of the program.

(6) Waiver

The ordinance states provides for a waiver, adjustment or reduction if the applicant shows that there is no reasonable relationship between the impact of a proposed development and the requirements of this ordinance. To receive a waiver, reduction or adjustment, the applicant must make a showing when applying for the first approval for the proposed development and/or as part of any appeal process for the first approval.

(7) Incentives

For ownership developments, the Ordinance allows developers to make the affordable units smaller with different interior finishes than the market rate units so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing. As well, affordable units located within single family

detached developments may be attached (such as corner duets or tri-plexes) and single story (in multi-story developments). Should a development qualify for a density bonus under State Law, the additional units would not be counted as part of the development (the 15% affordable requirement calculation would not include the units awarded under the density bonus law).

(8) Use and Expenditure of In-Lieu Fees

The proposed Ordinance requires that all fees collected and interest earned shall be expended exclusively to provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies or other methods and for costs of administering programs which serve those needs.

Other provisions of the Proposed Ordinance: Affordable rental units shall remain affordable for a fifty-five (55) year period, and ownership units for thirty years (30); however, in the case of ownership units, should the unit be sold or transferred during the required term, a new 30-year restriction shall be renewed. The City retains the first right of refusal for each resale and is responsible to approve every buyer. If the City fails to find suitable buyers within a specified period (initially 90 days with 90 extension period), the owner can sell the unit at market rate. Regulatory agreements and resale restrictions will be imposed so that the owner/s of an affordable unit can earn a reasonable equity return upon resale but the resale price shall remain affordable to the next moderate-income purchaser.

Project Analysis: As part of the City of Fremont's requirement to meet its regional housing needs allocation, the City's Housing Element calls for the development of an Inclusionary Housing Program. Approximately 25 percent of California cities have adopted such programs, which typically require affordable housing be created in conjunction with market rate residential development.

General Plan Conformance: The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

The Housing Element, adopted in February of 2002, states the following:

Policy 3C: Maintain and/or Adopt Appropriate Land Use Regulations and Other Development Tools to Encourage the Development of Affordable Housing.

Implementation Programs:

20 Develop and Implement an Inclusionary Housing Program.

Develop an Inclusionary Housing Program that requires a minimum amount of affordable housing to be created in conjunction with market rate residential development. Ensure that the program will include policies that require units affordable to very low, low and moderate-income households and provides a variety of methods to achieve those goals, such as on-site units, in-lieu fees and/or land donation.

*Time Frame: 2001-02 Develop Program
2002-2006 Implement Program*

Objectives: 350-400 total units affordable to very low, low, and moderate income Households

The proposed Inclusionary Housing Ordinance implements this Housing Element Policy 3C, Implementation Program 20.

Environmental Analysis: An Initial Study and Draft Negative Declaration, has been prepared for this project. The environmental analysis did not find any potentially significant impacts associated with the proposed ordinance. No development is proposed by the proposed program and all future residential projects that would

contain an inclusionary housing component would be subject to environmental review at the time the specific projects are proposed. The Initial Study and Negative Declaration for the project are included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment. Accordingly, a Draft Negative Declaration has been prepared for consideration by the Planning Commission for recommendation to the City Council.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Enclosures: Exhibit "A" Zoning Text Amendment
Exhibit "B" Findings of Public Necessity, Convenience and General Welfare
Initial Study and Negative Declaration
City of Fremont Inclusionary Housing Study (Informational)
City of Fremont Affordability Gap Analysis Summary of Results (Informational)
Development Impact Fees Comparison (Informational)
Income Limits 2002 (Informational)
Meeting Notes (Informational)

Exhibits: Exhibit "A" Zoning Text Amendment
Exhibit "B" Findings of Public Necessity, Convenience and General Welfare

Recommended Actions:

1. Hold a public hearing.
2. Recommend to the City Council that the initial study conducted for PLN 2003-00088 has evaluated the potential impacts of the Inclusionary Housing Ordinance that could cause an adverse effect, either individually or cumulatively, on wildlife resources and find that there is no evidence the project would have any potential for adverse effect on wildlife resources.
3. Recommend to the City Council adoption of Draft Negative Declaration PLN2003-00088, finding that it reflects the independent judgement of the City of Fremont, and finding there is no substantial evidence that the project will have a significant effect on the environment.
4. Recommend that the City Council find that the proposed Inclusionary Housing Ordinance (PLN2003-00088) is in conformance with the relevant provisions contained in the City's General Plan. The proposed Inclusionary Housing Ordinance implements the recently adopted Housing Element, Policy 3C, Implementation Program number 20.
5. Recommend that the City Council adopt the findings of the public necessity, convenience and general welfare that require the adoption of this Zoning Text Amendment PLN 2003-00088 attached as Exhibit B in order to implement a portion of the City's Housing Element to encourage the development of affordable housing.
6. Recommend the proposed Inclusionary Housing Ordinance (PLN2003-00088) to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).

Exhibit B
Findings of Public Necessity, Convenience and General Welfare
PLN 2003-00088
Inclusionary Housing Ordinance

1. The City has great unmet needs for housing for individuals and families who have low, very low and moderate incomes; the Association of Bay Area Governments has assigned the City a fair share of 3,266 affordable units for the period 2001 through 2006;
2. Neither the City's resources nor other sources of financing are sufficient, despite the best efforts of the City and the City of Fremont Redevelopment Agency, to produce affordable housing for most of those with unmet needs;
3. Unless new housing development contains some portion of housing affordable to moderate, low and very low income households, the City cannot meet its regional housing allocation needs; the City's regional housing allocation needs of 3,266 units represents over half of the City's anticipated residential build-out.
4. An inclusionary requirement of 15%, while substantially less than the percentage of affordable units which would be required to meet the City's overall fair share, would significantly contribute to meeting the need;
5. Including affordable units in private residential development in different parts of the City will help keep the City an economically balanced community, with homes for people at varying income levels in many parts of the City;
6. Allowing developers, if they choose to satisfy the inclusionary requirement by causing affordable units to be built on a separate site, by dedicating adjacent land to be used for a separate affordable development or, in some cases, by paying an in-lieu fee will give developers flexibility in meeting the community's goals, and make the requirement easier to meet;
7. Applying an inclusionary requirement only to new development applications will give developers an opportunity to plan for the requirement, and to reduce the price paid for development sites to take into account the inclusionary requirement;
8. Adoption of the inclusionary requirement before the Commission is an appropriate, and essential, measure to implement the City's plans to provide homes for families and individuals with a wide range of incomes, and to address the City's otherwise unmet housing needs;
9. The public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment PLN 2003-00088 in order to implement a portion of the City's Housing Element to encourage the development of affordable housing.

DRAFT INCLUSIONARY HOUSING ORDINANCE
(FREMONT)

Section 1. Basis and Purposes.

 In enacting this ordinance, the City finds as follows:

 (a) Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

 (b) Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move, or who wish to live in the City for other reasons, cannot afford housing in the City.

 (c) Federal and State government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, lower or very low income households.

 (d) Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City. Providing the affordable units required by this ordinance will help to insure that part of the City's remaining developable land is used to provide affordable housing.

 (e) The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's General Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

 (f) An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of

incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

(g) In general, affordable units within each housing development would serve the goal of maintaining an economically balanced community. Construction of required units off-site may be appropriate in some cases, but should be allowed only where a project sponsor demonstrates satisfaction of the criteria set forth in this ordinance.

Section 2. Definitions.

(a) Affordable ownership cost. Average monthly housing payments, during the first calendar year of a household's occupancy, including property taxes, homeowners insurance and homeowners association dues, if any, which are equal to or less than one-twelfth (1/12) of thirty-five percent (35%) of the maximum annual household income allowed for the affordable unit. Maximum annual household income shall be set based on presumed occupancy levels of one person in a studio apartment, two (2) persons in a one (1) bedroom unit, three (3) persons in a two bedroom unit and one additional person for each additional bedroom thereafter.

(b) Affordable rent. Monthly rent, including utilities and all fees for housing services, equal to or less than one-twelfth (1/12) of thirty percent (30%) of the maximum annual household income allowed for the affordable unit. Maximum annual household income shall be set based on presumed occupancy levels of one person in a studio apartment, two (2) persons in a one (1) bedroom unit, three (3) persons in a two (2) bedroom unit, and one additional person for each additional bedroom thereafter.

(c) Affordable units. Living units which are required under this chapter to be rented at affordable rents or available at an affordable housing cost to specified households.

(d) Area median income. Area median income as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

(e) Construction cost index. The Engineering News Record San Francisco Building Cost Index. If that index ceases to exist, the City Manager shall substitute

another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.

(f) Consumer Price Index. The U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Statistical Area or if that index is discontinued, a successor index selected by the City Manager.

(g) Eligible household. A household whose household income does not exceed the maximum specified in Section 6 for a given affordable unit.

(h) First approval. The first of the following approvals to occur with respect to a residential project: planned district approval, subdivision approval, conditional use permit, building permit.

(i) For-sale project. A residential project, or portion thereof, which is intended to be sold to owner-occupants upon completion.

(j) Household income. The combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor

(k) Living unit. One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.

(l) Market rate units. New living units in residential projects which are not affordable units under subdivision (c) of this section.

(m) Pending project. A project for which a tentative map application or other development application, other than a Preliminary Review Process (PRP) application, has been filed with the City on, and has been deemed complete by the City no later than _____, the date thirty days after the effective date of this chapter, to the extent living units are constructed pursuant to that application without substantial modification of the original application.

(n) Published standard. The standard for a specified income level for Alameda County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

(o) Rental project. A residential project, or portion thereof, which is intended to be rented to tenants upon completion.

(p) Residential project. Any planned district, subdivision map, conditional use permit or other discretionary City land use approval which authorizes seven or more living units or residential lots, or living units and residential lots which total seven or more in combination. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of seven or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a residential project. Construction shall be considered contemporaneous for all units which have not received certificates of occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use permit or other discretionary City land use approvals, or building permits, or applications for such an approval or permits. A pending project shall not be considered a residential project under this chapter.

Section 3. Basic Requirement.

(a) At least fifteen percent (15%) of all new residential units in any residential project shall be made available at affordable rents or affordable housing cost as prescribed in Section 6 and shall be approved and completed not later than the times prescribed in Section 5, unless one of the alternative actions set forth in Section 8 is performed. For purposes of calculating the number of affordable units required by this section, any additional units authorized as a density bonus pursuant to California Government Code Section 65915(b)(1) or (b)(2) shall not be counted as part of the residential project. For fractions of units in residential projects which contain more than 20 living units, where the fraction is .6 or greater, the owner of the property must construct the next higher whole number of affordable units, and where the fraction is less than .6, the owner may construct the next lower whole number of affordable units. For fractions of units in residential projects which contain 20 units or less, the fraction shall be disregarded in calculating the number of affordable units required.

(b) The requirements of this chapter are minimum requirements. The City may require additional affordable units or additional measures to further affordable housing to the extent it has authority to do so without respect to this chapter.

(c) Notwithstanding any other provision of this chapter, the requirements of this chapter shall be waived, adjusted or reduced if the applicant shows that there is no reasonable relationship between the impact of a proposed residential project and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the U.S. or California Constitution. To receive a waiver, adjustment or reduction under this subsection (c), the applicant must make a showing under this subsection when applying for a first approval for the residential project, and/or as part of any appeal which the City provides as part of the process for the first approval.

Section 4. Incentives.

Residential projects which comply with this chapter may elect the following:

(a) Subject to Section 6(c) and subject in each case to the approval of the City Manager or the Manager's designee, affordable units in a for-sale project may be smaller in aggregate size and have different interior finishes and features than market-rate units in the same residential project (so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing).

(b) In a residential project which contains single-family detached homes, affordable units may be attached living units rather than detached homes, and in a residential project which contains attached multi-story living units, affordable units may contain only one story.

(c) As stated in Section 3(a), in calculating the number of affordable units required by this chapter, any additional units authorized as a density bonus pursuant to California Government Code Section 65915(b)(1) or (b)(2) shall not be counted as part of the residential project.

Section 5. Time Performance Required.

(a) No building permit shall be issued for any market rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of Section 3, or received certification from the City Manager or the Manager's designee that the permittee has met, or made arrangements satisfactory to the City to meet, an alternative requirement of Section 8. No temporary or permanent certificate of occupancy for any market rate unit shall be issued until the permittee has constructed the

affordable units required by Section 3 or completed corresponding alternative performance under Section 8.

(b) Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project. Additional conditions may be imposed on later City approvals or actions, including without limitation planned district approvals, subdivision approvals, conditional use permits and building permits.

Section 6. Requirements for Affordable Units.

(a) The affordable units which are constructed in rental projects shall be offered for rent at affordable rents exclusively to households whose income does not exceed the published standard for lower income households, adjusted for household size. Of these affordable units in rental projects, sixty percent (60%) of the required 15%, or 9% of the total units in the project, shall be offered at affordable rents exclusively to households whose income does not exceed the published standard for very low income households, adjusted for household size, provided that where this requirement for very low income units would result in a fraction of a very low income unit, the number of very low income units shall be rounded down and the number of lower income units which need not be very low income units shall be rounded up.

(b) The affordable units which are constructed in for-sale projects shall be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and ten percent (110%) of area median income, adjusted for household size, or offered for rent pursuant to the terms of Section 8(a), provided that such units may be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and twenty percent (120%) of area median income when the City Manager, or the Manager's designee determines that is necessary to secure households able to qualify for mortgages to purchase the units.

(c) Subject to Section 8(a), affordable units shall be comparable in overall number of bedrooms, proportion of units in each bedroom category, quality of exterior appearance and overall quality of construction to market rate units in the same residential project. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project in a manner acceptable to the City.

Section 7. Continued Affordability; City Review of Occupancy.

(a) Regulatory agreements acceptable to the City Manager or the Manager's designee and, if the affordable units are designated for owner occupancy, resale restrictions, deeds of trust and/or other documents acceptable to the City Manager or the Manager's designee, all consistent with the requirements of this chapter, shall be recorded against affordable owner-occupied units and residential projects containing affordable rental units. These documents shall, in the case of affordable units which are initially rented, be for a term of 55 years, and in the case of affordable units which are initially sold, be for a term of 30 years. In the case of affordable owner-occupied units which are transferred during the required term, renewed restrictions shall be entered into on each change of ownership, with a 30 year renewal term. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the City Manager or his or her designee prior to being executed with respect to any residential project.

(b) In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those provided in Section 6(b) or 6(c). For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

(c) The maximum sales price permitted on resale of an affordable unit designated for owner-occupancy shall be the lower of: (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (A) the rate of increase of area median income during the seller's ownership or (B) the rate at which the Consumer Price Index increased during the seller's ownership. The documents required by subsection (a) may authorize the seller to recover the market value at time of sale of capital improvements made by the seller and the seller's necessary costs of sale and may authorize an increase in the maximum allowable sales price to achieve such recovery. The resale restrictions shall allow the City a right of first refusal to purchase any

affordable owner-occupancy unit at the maximum price which could be charged to a purchaser household, at any time the owner proposes sale.

(d) No household shall be permitted to begin occupancy of a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. If the City or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of affordable units shall be selected first from the list or identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or the City Manager's designee. If the City has failed to identify an eligible buyer for initial sale of an affordable unit which is intended for owner-occupancy ninety days after the unit receives a certificate of occupancy, upon ninety additional days' notice to the City and on satisfaction of such further conditions as may be included in City-approved restrictions (which may include a further opportunity to identify an eligible buyer), the owner may sell the unit at a market price, and the unit shall after such a sale not be subject to any requirement of this chapter.

Section 8. Alternatives to On-Site Construction.

An applicant may elect, in lieu of building affordable units within a residential project, if the criteria stated in the relevant subsection below are satisfied in connection with and as part of the first approval for the residential project, to either:

(a) Rental Units in For-Sale Projects. Where owner-occupied affordable units are required by Section 6(b), instead construct as part of the residential project the same or a greater number of rental units, affordable to lower and very low income households and at rents as prescribed in Section 6(a). Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units which would have been allowed, or (2) any comparative deficiency in bedrooms is compensated for by additional units and/or affordability to households with lower incomes.

(b) Off-Site Construction. Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units and equal or

greater in number to the number of affordable units required under Section 5. Off-site construction pursuant to this subsection shall be approved only if:

(1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that certificates of occupancy for the related market-rate units be issued after those for the affordable units;

(2) The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required in Section 3;

(3) Financing or a viable financing plan is in place for the off-site units; and

(4) In the event the off-site units receive any public assistance, the developer of the residential project will contribute to the off-site units economic value equivalent to the value of making on-site units in the developer's residential project affordable.

The City may require that completion of off-site units shall be further secured by the developer's agreement to pay an in-lieu fee in the amount due under subsection (d) in the event the off-site units are not timely completed.

(c) Land Dedication. Dedicate without cost to the City, a lot or lots within or contiguous to the residential project, sufficient to accommodate at least the required affordable units for the residential project. An election to dedicate land in lieu of compliance with other provisions of this chapter shall be allowed only if:

(1) The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required affordable units economically feasible, and financing or a viable financing plan is in place for at least the required number of affordable units and;

(2) The lot or lots are suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure and there are no hazardous material or other material constraints on development of affordable housing on the lot or lots; and

(d) In-Lieu Fee. To the extent the residential project consists of for-sale units and its site is designated "residential very low density" or "open space" by the General Plan, pay an in-lieu fee.

(1) Fees shall be paid upon issuance of building permits for market-rate units in a residential project. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted.

(2) The initial fee schedule shall be set by the City fee resolution or other action of the City Council so that the fee amounts are sufficient to make up the gap between: (i) the amount of development capital typically expected to be available based on the amount to be received by a developer or owner from affordable housing cost or affordable rent, and (ii) the anticipated cost of prototypical affordable units.

(3) The City Council may annually review the fee authorized by this subsection (d) by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager or the Manager's designee based on the construction cost index. Where payment is delayed, in the event of default or for any other reason, the amount of the in-lieu fee payable under this subsection (d) shall be based upon the fee schedule in effect at the time the fee is paid.

(4) No temporary or permanent certificate of occupancy shall be issued for any corresponding market-rate unit in a residential project unless fees required pursuant to this chapter shall have been paid in full to the City.

Section 9. Use and Expenditure of Fees.

(a) All fees collected under this chapter shall be deposited into a separate account to be designated the City of Fremont Housing Trust Fund.

(b) The fees collected under this chapter and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies or other methods, and for costs of administering programs which serve those ends. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance.

Section 10. Enforcement.

(a) The City Attorney shall be authorized to enforce the provisions of this chapter and all regulatory agreements and resale controls placed on affordable units, by civil action and any other proceeding or method permitted by law.

(b) Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter.

Section 11. Severability.

If any clause, sentence, section, or part of this chapter, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this chapter on other persons or entities. It is hereby declared to be the intention of the City Council that this chapter would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part not been included herein, or had such person or entity been expressly exempted from the application of this chapter.

Section 12.

This ordinance shall take effect thirty days after final passage.